

7410

I N S E N A T E

April 8, 2010

Introduced by Sen. ESPADA -- read twice and ordered printed, and when printed to be committed to the Committee on Consumer Protection

AN ACT to amend the general business law, in relation to prohibiting a producer or refiner from selling, transferring, or assigning interest in a retail outlet leased to a dealer unless the producer or refiner makes certain offers of the producer's or refiner's interest to such dealer

THE PEOPLE OF THE STATE OF NEW YORK, REPRESENTED IN SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

1 Section 1. The general business law is amended by adding a new article
2 24-D to read as follows:

3 A R T I C L E 2 4 - D

4 S A L E O R T R A N S F E R O F G A S O L I N E R E T A I L O U T L E T S
5 SECTION 375. SALE OR TRANSFER OF GASOLINE RETAIL OUTLETS.

6 S 375. SALE OR TRANSFER OF GASOLINE RETAIL OUTLETS. (A) FOR THE
7 PURPOSES OF THIS SECTION:

8 (1) "PRODUCER" MEANS A PERSON WHO PURCHASES COMPONENT ELEMENTS AND
9 COMBINES THEM TO PRODUCE GASOLINE PRODUCTS.

10 (2) "BOOK VALUE" MEANS ACTUAL COST LESS ACTUAL DEPRECIATION TAKEN.

11 (3) "DEALER" MEANS ANY PERSON, OTHER THAN A REFINER OR WHOLESALER, WHO
12 IS ENGAGED IN THE BUSINESS OF SELLING MOTOR FUEL AT A RETAIL OUTLET.

13 (4) "REFINER" MEANS ANY PERSON WHO PRODUCES AND STORES OR EXCHANGES
14 MOTOR FUEL AT A TERMINAL FACILITY AND WHO SELLS OR TRANSFERS MOTOR FUEL
15 THROUGH THE LOADING RACK AT SUCH TERMINAL FACILITY, AND INCLUDES AN
16 AFFILIATE OF SUCH REFINER WITH RESPECT TO SUCH AFFILIATE'S SALE OF MOTOR
17 FUEL.

18 (5) "RETAIL OUTLET" MEANS A FACILITY, INCLUDING LAND AND IMPROVEMENTS,
19 WHERE MOTOR FUEL IS OFFERED FOR SALE AT RETAIL TO THE PUBLIC.

20 (B)(1) EVERY MARKETING AGREEMENT BETWEEN A REFINER OR PRODUCER AND A
21 DEALER IS SUBJECT TO THE PROVISIONS OF THIS SECTION, WHETHER OR NOT
22 EXPRESSLY SET FORTH OR STATED IN SUCH AGREEMENT.

23 (2) THIS SECTION SHALL NOT APPLY TO TRANSACTIONS OTHERWISE COVERED
24 UNDER THE FEDERAL PETROLEUM MARKETING PRACTICES ACT.

EXPLANATION--Matter in ITALICS (underscored) is new; matter in brackets
[] is old law to be omitted.

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1 (C) IF A PRODUCER OR A REFINER OWNS A FEE SIMPLE INTEREST IN A RETAIL
2 OUTLET LEASED TO A DEALER, THE PRODUCER OR REFINER MAY NOT SELL, TRANS-
3 FER, OR ASSIGN TO ANOTHER PERSON THE PRODUCER'S OR REFINER'S INTEREST IN
4 THE RETAIL OUTLET UNLESS THE PRODUCER OR REFINER:

5 (1) MAKES A BONA FIDE OFFER TO SELL, TRANSFER, OR ASSIGN TO THE DEALER
6 THE PRODUCER'S OR REFINER'S INTEREST IN THE RETAIL OUTLET, EXCEPT FOR
7 SIGNS DISPLAYING THE INSIGNIA OR ANY OTHER TRADEMARK, SERVICE MARK,
8 COPYRIGHT, OR PATENTED EQUIPMENT OF THE PRODUCER OR REFINER; OR

9 (2) IF APPLICABLE, OFFERS A RIGHT OF FIRST REFUSAL TO THE DEALER OF
10 ANY BONA FIDE OFFER ACCEPTABLE TO THE PRODUCER OR REFINER MADE BY ANOTH-
11 ER PERSON TO PURCHASE THE PRODUCER'S OR REFINER'S INTEREST IN THE RETAIL
12 OUTLET.

13 (D) IF A PRODUCER OR REFINER LEASES A RETAIL OUTLET FROM A THIRD PARTY
14 AND SUBLEASES THE RETAIL OUTLET TO A DEALER, THE PRODUCER OR REFINER MAY
15 NOT SELL, TRANSFER, OR ASSIGN TO ANOTHER PERSON THE PRODUCER'S OR REFIN-
16 ER'S INTEREST IN THE THIRD PARTY LEASE UNLESS THE PRODUCER OR REFINER:

17 (1)(I) MAKES A BONA FIDE OFFER TO SELL, TRANSFER, OR ASSIGN TO THE
18 DEALER THE PRODUCER'S OR REFINER'S INTEREST IN THE THIRD PARTY LEASE;
19 AND

20 (II) MAKES A BONA FIDE OFFER TO SELL, TRANSFER, OR ASSIGN TO THE DEAL-
21 ER THE PRODUCER'S OR REFINER'S INTEREST IN ANY IMPROVEMENTS OR EQUIPMENT
22 OWNED BY THE PRODUCER OR REFINER AND LOCATED AT THE RETAIL OUTLET,
23 EXCEPT FOR SIGNS DISPLAYING THE INSIGNIA OR ANY OTHER TRADEMARK, SERVICE
24 MARK, COPYRIGHT, OR PATENTED EQUIPMENT OF THE PRODUCER OR REFINER, AT A
25 PRICE NOT EXCEEDING THE GREATER OF THE FAIR MARKET VALUE OR THE BOOK
26 VALUE OF THE IMPROVEMENTS AND EQUIPMENT; OR

27 (2) IF APPLICABLE, OFFERS A RIGHT OF FIRST REFUSAL TO THE DEALER OF
28 ANY BONA FIDE OFFER ACCEPTABLE TO THE PRODUCER OR REFINER MADE BY ANOTH-
29 ER PERSON TO ACQUIRE THE PRODUCER'S OR REFINER'S INTEREST IN THE THIRD
30 PARTY LEASE AND THE IMPROVEMENTS AND EQUIPMENT LOCATED AT THE RETAIL
31 OUTLET.

32 S 2. This act shall take effect on the one hundred eightieth day after
33 it shall have become a law.